

EXHIBIT “1”

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2

SETTLEMENT AGREEMENT AND RELEASE

3 This Settlement Agreement and Release (the "Agreement") is entered into by and
4 between, on the one hand, Khalid McBeth and Carmine Cascone (the "Named
5 Plaintiffs"), individually and on behalf of a class they seek to represent ("Putative Class")
6 in the matter *McBeth et al. v. Gabrielli Truck Sales, Ltd., et al.*, and, on the other hand,
7 Gabrielli Truck Sales, Ltd., Gabrielli Truck Sales of Connecticut, L.L.C., Gabrielli Ford
8 Truck Sales & Services, Inc., Armando Gabrielli, and Amedeo Gabrielli ("Gabrielli
9 Defendants") (collectively "Parties").

10 **1. RECITALS AND BACKGROUND**

11 WHEREAS, Named Plaintiffs have filed a Class and Collective Action Complaint
12 against Gabrielli Defendants under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*
13 ("FLSA") and New York state wage and hour law for the alleged failure to pay certain
14 wage and overtime amounts to Named Plaintiffs and the Putative Class (the "Litigation");
15

16 WHEREAS, solely for the purpose of settling this Litigation, and without
17 admitting any wrongdoing or liability, the Gabrielli Defendants have agreed to collective
18 and class certification under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*
19 ("FLSA") and under Rule 23 of Federal Rules of Civil Procedure to cover New York state
20 wage and hour claims,
21

22 WHEREAS, the purpose of this Agreement is to settle fully and finally all
23 Released Claims and Released Rule 23 Class Claims, between Named Plaintiffs, the
24 Class and Gabrielli Defendants, including all claims asserted in the Litigation;
25

26 WHEREAS, Gabrieilli Defendants deny all of the allegations made by Named
27 Plaintiffs in the Litigation, and deny any and all liability and damages to anyone with
28 respect to the alleged facts or causes of action asserted in the Litigation;
29

30 WHEREAS, on or around February 16, 2011, Named Plaintiffs and Gabrielli
31 Defendants engaged in mediation to attempt to resolve the Litigation and reached an
32 accord resulting in this Agreement;

33 WHEREAS, without admitting or conceding that class and collective certification
34 is warranted, without further acknowledging or conceding any liability or damages
35 whatsoever, and without admitting that pay and/or overtime amounts improperly were
36 withheld from any employees, Gabrielli Defendants agreed to settle the Litigation on the
37 terms and conditions set forth in this Agreement, to avoid the burden, expense, and
38 uncertainty of continuing the Litigation; and
39

40 WHEREAS, Plaintiffs' Counsel analyzed and evaluated the merits of the claims
41 made against Gabrielli Defendants and the impact of this Agreement on Named Plaintiffs
42 and Class Members of the collective and class action and based upon their analysis and
43 evaluation of a number of factors, and recognizing the substantial risks of continued

1 litigation, including the possibility that the Litigation, if not settled now, might not result
2 in any recovery whatsoever, or might result in a recovery that is less favorable and that
3 would not occur for several years, Plaintiffs' Counsel is satisfied that the terms and
4 conditions of this Agreement are fair, reasonable and adequate and that this Agreement is
5 in the best interest of the Named Plaintiffs and Putative Class Members.
6

7 NOW THEREFORE, in consideration of the mutual covenants and promises set
8 forth in this Agreement, as well as the good and valuable consideration provided for
9 herein, the Parties hereto agree to a full and complete settlement of the Litigation on the
10 following terms and conditions:
11

12 **1. DEFINITIONS**

13 The defined terms set forth in this Agreement have the meanings ascribed to them
14 below.

15 **1.1 Agreement.** "Agreement" means this Settlement Agreement and Release.

16 **1.2 Authorized Claimant.** A Class Member or the authorized legal representative of
17 such member, who files a Claim Form and becomes entitled to receive a
18 Settlement Payment.

19 **1.3 Bar Date.** The date by which any Class Member who wishes to qualify as an
20 Authorized Claimant must file a Claim Form, which date shall be no later than
21 forty-five (45) days after the initial mailing of Notice by the Settlement Claims
22 Administrator.

23 **1.4 Claim Form.** "Claim Form" shall mean the form, a copy of which is attached to
24 the Notice of Proposed Settlement, that Named Plaintiffs and Class Members
25 must sign and return post-marked by the Bar Date. The Claim Form must be filed
26 with the Court for a Class Member to be eligible for a distribution from the
27 Settlement Amount.

28 **1.5 Class Counsel.** "Class Counsel" or "Plaintiffs' Counsel" shall mean Lloyd
29 Ambinder, Virgina & Ambinder, LLP, Trinity Centre, 111 Broadway, Suite 1403,
30 New York, New York, 10006 and Jeff Brown, Leeds Morelli & Brown, P.C., One
31 Old Country Road, Suite 347, Carle Place, New York 11514.

32 **1.6 Class Members.** "Class Members" shall mean: Named Plaintiffs and current
33 and former employees of the Defendants who performed work as partsmen
34 (including, but not limited to, back-counter, front-counter, and warehouse
35 partsmen or workers) who worked for Gabrielli Defendants during the period
36 September 23, 2003 through March 1, 2011.

37 **1.7 Class List.** A list of all Class Members, identified by: (i) name; (ii) last known
38 address; (iii) classification (warehouse or partsmen); (iv) dates of employment;
39 (v) weeks worked as partsmen or warehouse worker, and; (vi) Social Security
40 number, contained in a confidential document that Gabrielli Defendants shall

1 provide to Class Counsel and the Settlement Administrator. The Class List is to
2 be used by Class Counsel and Settlement Administrator to effectuate settlement,
3 and may not be used for any other purpose.

4 **1.8 Court.** "Court" means the United States District Court for the Eastern District of
5 New York.

6 **1.9 Days.** "Days" means business days if the specified number is less than 10, and
7 calendar days if the specified number is 10 or greater.

8 **1.10 Gabrielli Defendants.** "Gabrielli Defendants" shall mean Gabrielli Truck Sales,
9 Ltd., Gabrielli Ford Truck Sales & Services, Inc., Armando Gabrielli, and
10 Amedeo Gabrielli, their present and former owners, stockholders, predecessors,
11 successors, assigns, agents, directors, officers, employees, representatives,
12 insurers, attorneys, parents, subsidiaries, affiliates, benefit plans, plan fiduciaries,
13 and all persons acting by, through, under or in concert with any of them.

14 **1.11 Gabrielli Defendants' Counsel.** "Gabrielli Defendants' Counsel" shall mean
15 Paul J. Siegel and Jeffrey W. Brecher, Esq. of Jackson Lewis, LLP, 58 South
16 Service Road, Suite 410, Melville, New York 11747.

17 **1.12 Employer Payroll Taxes.** "Employer Payroll Taxes" means all taxes and
18 withholdings an employer is required to make arising out of or based upon the
19 payment of employment compensation in this Litigation, including FICA, FUTA,
20 and SUTA obligations.

21 **1.13 Fairness Hearing.** "Fairness Hearing" means the hearing before the Court
22 relating to the Motion for Final Approval.
23

24 **1.14 Final Approval Order.** "Final Approval Order" means the Order entered by the
25 Court after the Fairness Hearing, approving the terms and conditions of this
26 Agreement, distribution of the Settlement Checks and Service Awards, and
27 Dismissal of the Litigation with prejudice.
28

29 **1.15 Final Effective Date.** "Final Effective Date" shall be the first date after the Court
30 has entered a Final Approval Order approving this settlement and the Court has
31 entered the judgment as provided in Section 2.12(A); the time to appeal from the
32 Final Approval Order has expired and no notice of appeal has been filed or if a
33 notice of appeal is filed, the latest of the following, if applicable, has occurred: (1)
34 any appeal from the Final Approval Order has been finally dismissed; (2) the
35 Final Approval Order has been affirmed on appeal in a form substantially
36 identical to the form of the Final Approval Order entered by the Court; (3) the
37 time to petition for review with respect to any appellate decision affirming the
38 Final Approval Order has expired; and (4) if a petition for review of an appellate
39 decision is filed, the petition has been denied or dismissed, or, if granted, has
40 resulted in affirmance of the Final Approval Order in a form substantially
41 identical to the form of the Final Approval Order entered by the Court.

- 1
2 **1.16 Released Rule 23 Class Claims.** “Released Rule 23 Class Claims” means all
3 wage and hour claims that could have been asserted under federal or state law by
4 or on behalf of Class Members, excluding Class Members who opt-out of the
5 settlement, for the period September 23, 2003 through March 1, 2011, under New
6 York Labor Law, but not including claims under the Fair Labor Standards Act.
7 The Released Rule 23 Class Claims include all claims under state law for unpaid
8 regular or overtime wages, any related wage and hour claims, all ‘derivative
9 benefit claims’ (*defined as* claims for benefits resulting from alleged failure to pay
10 overtime or wages, both ERISA and non-ERISA benefits), interest on such
11 claims, and attorneys’ fees, expenses and costs related to such claims.
12
- 13 **1.17 Released Claims.** Means all wage and hour claims that could have been asserted
14 under federal or state law by or on behalf of Authorized Claimants, in the
15 Litigation for the period September 23, 2003 through March 1, 2011, including
16 under the Fair Labor Standards Act and New York Labor Law. The Released
17 Authorized Claimant Claims include all claims under state and federal law for
18 unpaid regular or overtime wages, any related wage and hour claims, all
19 ‘derivative benefit claims’ (*i.e.*, claims for benefits resulting from alleged failure
20 to pay overtime or wages, both ERISA and non-ERISA benefits), interest on such
21 claims, and attorneys’ fees, expenses and costs related to such claims.
22
- 23 **1.18 Gross Settlement Fund.** “Gross Settlement Fund” refers to One Million One
24 Hundred Thousand Dollars (\$1,100,000), the maximum Gabrielli Truck Sales,
25 LTD has agreed to pay, subject to the right to terminate the Agreement settlement
26 as set forth in Paragraph 2.13 of this Agreement, to the Settlement Claims
27 Administrator pursuant to this Agreement to fully resolve and satisfy any claim
28 for attorneys’ fees, expenses and costs approved by the Court, any and all
29 amounts to be paid to Authorized Claimants, any Court-approved Service Awards
30 to Named Plaintiffs, any fees and costs associated with investing and liquidating
31 the QSF, the Settlement Claims Administrator’s fees and costs, and the Settlement
32 Claims Administrator’s payment of Employer Payroll Taxes. One Million One
33 Hundred Thousand Dollars (\$1,100,000) is the maximum amount that shall be
34 paid.
35
- 36 **1.19 Named Plaintiffs.** “Named Plaintiffs” refers to Khalid McBeth and Carmine
37 Cascone.
38 **1.20 Notice or Notices.** “Notice” or “Notices” means the Court-approved Notices of
39 Proposed Settlement of Class Action and Collective Action Lawsuit including
40 notice of an opportunity to opt-out and/or object to the proposed Settlement.
41 **1.21 Objector.** “Objector” means an individual who properly files an objection to this
42 Agreement, and does not include any individual who opts-out of this Agreement.

- 1 **1.22 Opt-in Plaintiff.** “Opt-in Plaintiff” means those individuals who file Claim
2 Forms in the Litigation up to and including the deadline for filing specified in the
3 Preliminary Approval Order.
- 4 **1.23 Opt-out Statement.** “Opt-out Statement” is a written signed statement that an
5 individual Class Member has decided to opt-out and not be included in this
6 Agreement.
- 7 **1.24 Preliminary Approval Order.** “Preliminary Approval Order” means the Order
8 entered by the Court: (i) certifying the Class solely for purposes of effectuating
9 the settlement only; (ii) preliminarily approving the terms and conditions of this
10 Agreement, and, (iii) directing the manner and timing of providing Notices to the
11 Class Members.
- 12 **1.25 Qualified Settlement Fund or QSF.** “Qualified Settlement Fund” or “QSF”
13 means the account established by the Settlement Claims Administrator for the
14 Settlement Amount paid by Gabrielli Defendants. The QSF will be controlled by
15 the Settlement Claims Administrator subject to the terms of this Agreement and
16 the Court’s Orders for Preliminary Approval and Final Approval. Interest, if any,
17 earned on the QSF will become part of the Net Settlement Fund.
- 18 **1.26 Settlement Claims Administrator.** The “Settlement Claims Administrator”
19 refers to the Settlement Claims Administrator selected pursuant to Paragraph 2 to
20 mail the Notices and administer the calculation, allocation, and distribution of the
21 QSF. The Settlement Claims Administrator’s fees shall be borne by the QSF.
- 22 **1.27 Settlement Checks.** “Settlement Checks” means checks issued to Class
23 Members for their share of the Gross Settlement Fund calculated in accordance
24 with this Agreement.
- 25 **1.28 Settlement Mediator.** The “Settlement Mediator” or “Mediator” shall mean
26 Martin Scheinman, Esq.

27

28 **2. INITIAL PROCEDURAL ISSUES**

- 29 **2.1 Binding Agreement.** This Agreement is a binding agreement and contains all
30 material agreed-upon terms.
- 31 **2.2 Settlement Class.** For purposes of settlement only, the Parties stipulate to class
32 certification pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure to
33 include all Class Members possessing New York State Labor Law claims.
- 34 **2.3 Retention of the Settlement Claims Administrator.** Within ten (10) days after
35 the filing of a Motion for Preliminary Approval, the Parties shall engage a
36 Settlement Claims Administrator who is mutually agreeable to the Parties to be
37 the Settlement Claims Administrator. If the Parties are unable to agree on a

1 Settlement Claims Administrator, the Parties shall submit their preference to
2 Mediator Martin Scheinman, to obtain a decision which shall not be subject to
3 appeal.

4 **2.4 Responsibilities of Settlement Claims Administrator.** The Settlement Claims
5 Administrator shall be responsible for: (i) preparing, printing and disseminating
6 to Class Members the Class Notice and Claim Forms (ii) copying counsel for all
7 Parties on material correspondence and promptly notifying all counsel for the
8 Parties of any material requests or communications made by any Party (iii)
9 preparing, monitoring and maintaining a toll-free number with phone answerers
10 until the Final Effective Date or the termination of this Agreement whichever
11 comes first; (iv) promptly furnishing to counsel for the Parties copies of any
12 requests for exclusion, objections or other written or electronic communications
13 from Class Members which the Settlement Class Administrator receives; (v)
14 receiving and reviewing the Claim Forms submitted by Class Members; (vi)
15 keeping track of requests for exclusion including maintaining the original mailing
16 envelope in which the request was mailed; (vii) mailing the settlement checks to
17 Authorized Claimants; (viii) preparing and mailing counsel's attorneys' fees,
18 expenses, and costs, service payments, and Settlement Payments in accordance
19 with this Settlement Agreement and Order of the Court; (ix) paying all payroll tax
20 obligations of Gabrielli Defendants including issuing the W-2 and 1099 Forms for
21 all amounts paid to the Class Members; (x) ascertaining current address and
22 addressee information for each Class Notice and Claim Form returned as
23 undeliverable and the mailing of Class Notice and Claim Form; (xi) responding to
24 inquiries of members of the Settlement Classes regarding procedures for filing
25 objections, opt-out forms, and Claim Forms; (xii) referring to Class Counsel all
26 inquiries by Class Members regarding matters not within the Settlement Claim
27 Administrator's duties specified herein; (xiii) responding to inquiries of Class
28 Counsel and Gabrielli Defendants' Counsel consistent with the Class
29 Administrator's duties specified herein; (xiv) promptly apprising counsel for the
30 Parties of the activities of the Settlement claims Administrator; (xv) maintaining
31 adequate records of its activities, including the dates of the mailing of Class
32 Notice(s) and mailing and receipt of Claim Forms(s), returned mail and other
33 communications and attempted written or electronic communications with Class
34 Members; (xvi) confirming in writing to Class Counsel, Defendants' Counsel and
35 the Court its completion of the administration of the settlement; (xvii) timely
36 responding to communications from the Parties or their counsel; and (xviii) such
37 other tasks as the Parties mutually agree. In addition, no later than twenty (20)
38 days prior to the Fairness Hearing, the Settlement Claims Administrator shall
39 certify jointly to Class Counsel and Gabrielli Defendants' Counsel (a) a list of all
40 Class Members who timely filed their Claim Form (b) a list of all Class Members
41 who filed a timely objection, and (c) a list of all Class Members who requested to
42 opt-out of the settlement at any time during the opt-out period. The Settlement
43 Claims Administrator shall also provide Gabrielli Defendants with an updated
44 address list for Class Members. Throughout the period of claims administration,
45 the Settlement Claims Administrator will provide reports to the Parties upon
46 request by either Party, regarding the status of the mailing of the Notices and

1 Claims Forms to Class Members, the claims administration process, and
2 distribution of the Settlement Checks or any other aspect of the claims
3 administration process.

4 **2.5 Class Notice.** The Class Notice will inform Class Members about this Settlement
5 and will also advise them of the opportunity to object to or opt-out, file a Claim
6 Form to join in the settlement, and/or to appear at the Fairness Hearing. Within
7 ten (10) days of the entry of the Preliminary Approval Order by the court, the
8 Settlement Claims Administrator will mail to all Class Members, via First Class
9 United States Mail, the Court-approved Notices of Proposed Settlement of Class
10 Action Lawsuit and Fairness Hearing, with Claims Form. The Settlement Claims
11 Administrator will take all reasonable steps to obtain the correct address of any
12 Class Members for whom a Notice and Claims Form is returned by the post office
13 as undeliverable, including a skip trace, and shall attempt a re-mailing to any
14 member of the Settlement Class for whom it obtains a more recent address. The
15 Settlement Claims Administrator shall also mail a Class Notice and Claim Form
16 to any Class Member who contacts the Settlement Claims Administrator during
17 the time period between the initial mailing of the class Notice and the Bar Date
18 and requests that their Class Notice and Claim Form be re-mailed. The Settlement
19 Claims Administrator will notify Class Counsel and Gabrielli Defendants'
20 Counsel of any Notice and Claims Form sent to a Class Member that is returned
21 as undeliverable after the first mailing, as well as any such Notice and Claims
22 Form returned as undeliverable after any subsequent mailing(s) as set forth in this
23 Agreement. All costs of locating members will be paid from the Qualified
24 Settlement Fund.

25 **2.6 Access to the Settlement Claims Administrator.** The Parties will have equal
26 access to the Settlement Claims Administrator throughout the claims
27 administration period. Class Counsel and the Gabrielli Defendants agree to
28 provide the Settlement Claims Administrator with all accurate information
29 necessary to calculate the Settlement Checks, and reasonably assist the Settlement
30 Claims Administrator in locating Class Members.

31 **2.7 Preliminary Approval Motion.**

32 (A) Within fifteen days of signing this Agreement, Plaintiffs' counsel shall file
33 a Motion for Preliminary Settlement Approval ("Preliminary Approval
34 Motion") and the proposed Notice, Claim Form and Preliminary Approval
35 Order certifying, for purposes of settlement, a State Class under Fed. R.
36 Civ. P. 23, certifying a collective action pursuant to 29 U.S.C. § 216(b),
37 and preliminarily approving the settlement. The proposed Notice, Claim
38 Form and Preliminary Approval Order approved by the Parties is annexed
39 hereto and made a part of this agreement as Exhibits "1", "2" and "3"
40 respectively. Gabrielli Defendants shall review the terms of the
41 Preliminary Approval Motion, Notice, Claim Form and Order to ensure
42 they are consistent with this Agreement.

27 2.8 Notice and Claims Forms to Class Members

1 envelope does not contain a post-mark, the date that the Class
2 Administrator stamps the envelope or claim form 'received,' shall apply.

3 **2.9 Class Member Opt-outs.**

- 4 (A) Class Members who choose to opt-out of the settlement as set forth in this
5 Agreement must mail via First Class United States Mail, postage prepaid,
6 a written, signed statement to the Settlement Claims Administrator that
7 states he or she is opting out of the settlement, and include his or her
8 name, address, and telephone numbers and statement indicating his or her
9 intention to opt-out such as: "I opt out of the Gabrielli wage and hour
10 settlement." ("Opt-out Statement"). To be effective, an Opt-out Statement
11 must be post-marked by the Bar Date.
- 12 (B) The end of the time period to opt-out of the settlement ("Opt-out Period")
13 shall be on or before the Bar Date.
- 14 (C) The Settlement Claims Administrator will stamp the received date on the
15 original of each Opt-out Statement that it receives and shall serve copies
16 of each Opt-out Statement on Class Counsel and Gabrielli Defendants'
17 Counsel not later than three (3) days after receipt thereof. The Settlement
18 Claims Administrator will also, within three (3) days of the end of the
19 Opt-out Period, file with the Clerk of Court, stamped copies of any Opt-
20 out Statements. The Settlement Claims Administrator will, within 24
21 hours of the end of the Opt-out Period, send a final list of all Opt-out
22 Statements to Class Counsel and Gabrielli Defendants' Counsel by both
23 email and overnight delivery. The Settlement Claims Administrator will
24 retain the stamped originals of all Opt-out Statements and originals of all
25 envelopes accompanying Opt-out Statements in its files until such time as
26 the Settlement Claims Administrator is relieved of its duties and
27 responsibilities under this Agreement.
- 28 (D) Any Class Member who does not submit an Opt-out Statement pursuant to
29 this Agreement, will be deemed to have accepted the settlement and the
30 terms of this Agreement, will be bound by the Judgment in this case, and
31 have any Released Rule 23 Class Claims released. Only those Class
32 Members who timely complete and return a Claim Form post-marked by
33 the Bar Date will be deemed Authorized Claimants. Authorized Class
34 Claimants will have all Rule 23 Released Claims dismissed, with
35 prejudice. Gabrielli will only fund amounts allocated to each Authorized
36 Class Claimant who returns a timely Claim Form as set forth in this
37 Agreement. Gabrielli Defendants shall have no obligation to pay or fund
38 any amounts allocated to Class Members who do not submit a timely
39 Claim Form as set forth in this Agreement. For purposes of this
40 agreement, the Named Plaintiffs are deemed to be Authorized Class
41 Claimants, and are not required to file a Claim Form.

1 2.10 **Objections to Settlement.**

- 2 (A) Class Members who wish to present objections to the proposed settlement
3 at the Fairness Hearing must first do so in writing. To be considered, such
4 statement must be mailed to the Settlement Claims Administrator via
5 First-Class United States Mail post-marked by the Bar Date. The
6 statement must include all reasons for the objection, and any supporting
7 documentation. The statement must also include the name, address, and
8 telephone numbers for the Class Member making the objection. The
9 Settlement Claims Administrator will stamp the date received on the
10 original and send copies of each objection, supporting documents, as well
11 as a copy of the notice and share form mailed to the Objector, to Class
12 Counsel and Gabrielli Defendants' Counsel by email delivery no later
13 than three (3) days after receipt of the objection. The Settlement Claims
14 Administrator will also file the date-stamped originals of any and all
15 objections with the Court within three (3) days after the end of the Opt-out
16 Period.
- 17 (B) An individual who files objections to the settlement ("Objector") also has
18 the right to appear at the Fairness Hearing either in person or through
19 counsel hired by the Objector. An Objector who wishes to appear at the
20 Fairness Hearing must state his or her intention to do so in writing on his
21 or her written objections at the time he or she submits his or her written
22 objections. An Objector may withdraw his or her objections at any time.
- 23 (C) The Parties may file with the Court written responses to any filed
24 objections no later than three (3) days before the Fairness Hearing.

25 2.11 **Fairness Hearing and Motion for Final Approval and Dismissal.**

- 26 (A) At the Fairness Hearing and Motion for Final Approval and Dismissal, the
27 Parties will request that the Court, among other things: (1) certify the
28 Class for purposes of settlement only; (2) approve the settlement and
29 Agreement as fair, reasonable, adequate, and binding on all Class
30 Members who have not timely opted out of the settlement; (3) order the
31 Settlement Claims Administrator to distribute Settlement Checks to the
32 Class Members, including Service Awards, if any, to be paid to certain
33 Class Members as described in this Agreement; (4) order the attorneys'
34 fees, expenses and costs to be paid to Class Counsel from the QSF; (5)
35 order the Settlement Claims Administrator to satisfy the employer
36 obligations to pay all employer taxes and withholdings on the Settlement
37 Checks from the QSF; (6) order that the Court's Order dated November 1,
38 2010 shall not be binding under principles of res judicata or collateral
39 estoppel on Gabrielli Defendants as to any lawsuit commenced by any
40 Class Member who does not file a Claim Form or who files an Opt-Out
41 Statement; (7) order the dismissal with prejudice of all Released Class
42 Claims and Released Rule 23 Class Claims asserted in the Litigation,

including the claims of all Class Members who did not opt-out, subject only to an application for relief under Fed. R. Civ. P. 60(b)(1), or 60(d); (8) order entry of Final Judgment in accordance with this Agreement; (9) order that claims forms be filed with the Court within five days of the Final Order, and (10) retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated thereby.

- (B) The Final Approval Order will order the Settlement Class Administrator to (1) provide verification to Class Counsel and Gabrielli Defendants' Counsel that it has distributed the Settlement Checks, and (2) retain copies of all of the endorsed Settlement Checks.

13

14 2.12 Mailing of Settlement checks.

15 The Settlement Checks and Class Counsels' check to pay for all approved
16 professional fees and expenses, will be mailed to the Class Members and to Class
17 Counsel by the Settlement Claims Administrator 10 days after the Final Effective
18 Date.

19 2.13 Termination of Agreement

20 (A) **Grounds for Settlement Termination.**

1. Gabrielli Defendants have the right to terminate this Agreement, at their sole option, if aggregate figure representing the payments to be made to all Authorized Class Claimants, plus attorneys' fees, expenses and costs approved by the Court, any Court-approved Service Awards to Named Plaintiffs, any fees and costs associated with investing and liquidating the QSF, the Settlement Claims Administrator's fees and costs, and the Settlement Claims Administrator's payment of Employer Payroll Taxes exceeds Seven Hundred Thousand Dollars (\$700,000.00).
 2. Either Party may terminate the Agreement if the Court declines to enter the Preliminary Approval Order or Final Approval Order, except if the Court declines to enter the Preliminary Approval Order or Final Approval Order because of the attorneys' fees sought by Plaintiffs' counsel. This Agreement is not contingent upon approval by the Court of Plaintiffs' counsel's application for attorneys' fees, and the if the Court approves the settlement payment amount allocated to the Class Members as set forth in this Agreement, but not the application for attorneys' fees, the Agreement may not be terminated. The Gabrielli Defendants will

not oppose an application for attorneys' fees, including a motion for reconsideration and/or appeal, to the extent that the Court does not approve Class Counsels' application for attorneys' fees.

11 (C) Effect of Termination. Termination shall have the following effects:

1. The Agreement shall be terminated as to the affected Parties and shall have no force or effect, and no Party shall be bound by any of its terms with respect to the terminating Parties;
 2. In the event the settlement is terminated, Gabrielli Defendants shall have no obligation to make any payments to any party, class member or attorney. Amounts deposited in the Qualified Settlement Fund shall be returned to Gabrielli Defendants in care of Gabrielli Defendants' Counsel with all accrued interest, except that the parties shall pay equally the Settlement Claims Administrator for services rendered up to the date the Settlement Claims Administrator is notified that the settlement has been terminated for providing notices to the Class Members as set forth herein, and for terminating the QSF;
 3. The Settlement Claims Administrator will provide a Court approved notice to Class Members that the Agreement did not receive Final Approval and that, as a result, no payments will be made to Class Members under the Agreement. Such notice shall be mailed by the Settlement Claims Administrator via First Class United States Mail;
 4. The Parties may jointly or individually seek reconsideration of a ruling by the Court declining to enter the Preliminary Approval Order, Final Approval Order or judgment in the form submitted by the Parties, or to seek Court approval of a renegotiated settlement, the Litigation will resume as if no settlement had been attempted and the Agreement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the action prior to the settlement. Gabrielli Defendants retain the right to contest whether the Litigation should

be maintained as a class action, and to contest the merits of the claims being asserted in the Litigation.

3.3. SETTLEMENT TERMS

4 3.1 Settlement Amount.

- 5 (A) Gabrielli Truck Sales, Ltd. agrees to pay a maximum Gross Settlement
6 Amount of One Million One Hundred Thousand Dollars (\$1,100,000)
7 which shall fully resolve and satisfy any claim for attorneys' fees,
8 expenses and costs approved by the Court, any and all amounts to be paid
9 to all Authorized Claimants for releasing claims as set forth herein, any
10 Court-approved Service Awards to Named Plaintiffs, any fees and costs
11 associated with investing and liquidating the QSF, the Settlement Claims
12 Administrator's fees and costs, and the Settlement Claims Administrator's
13 payment of Employer Payroll Taxes. Gabrielli Defendants will not be
14 required to pay more than the gross total of One Million One Hundred
15 Thousand Dollars (\$1,100,000) under the terms of this Agreement.

16 (B) Gabrielli Truck Sales, Ltd. shall fund the Qualified Settlement Fund in an
17 amount equal to the amount of the Gross Settlement Amount that has been
18 claimed by Class Members as a result of the filing of timely Claim Forms.
19 Gabrielli Truck Sales, Ltd. shall fund the Qualified Settlement Fund ten
20 (10) days after the Final Effective Date.

21 (C) The Settlement Claims Administrator shall set aside Ten Thousand
22 Dollars and No Cents (\$10,000.00) of the QSF to cover any errors or
23 omissions (e.g., individual employees who dispute the workweeks
24 allocated to them; employees who allege they should be part of the class),
25 and satisfy any claim for relief allowed pursuant to Fed. R. Civ. P.
26 60(b)(1) or 60(d). This amount will remain in the QSF and any part of it
27 remaining after any correctable errors or omissions are covered will revert
28 to Defendants. Any Class Claimant who is unable to resolve any claimed
29 errors or omissions out of this \$10,000.00 amount of the QSF within
30 ninety (90) days of the Final Effect Date shall be required to Opt Out.

31 (D) Any uncashed Settlement Checks or Service Awards and all amounts
32 remaining in the QSF one calendar year after the mailing of the settlement
33 checks will revert to Gabrielli Truck Sales, LTD. For purposes of this
34 provision, the mailing date shall be deemed to be the date posted on the
35 settlement checks.

36 3.2 Settlement Amounts Payable as Attorneys' Fees, Expenses and Costs.

- 37 (A) At the Fairness Hearing and Motion for Final Approval, Class Counsel
38 will petition the Court for an award of attorneys' fees of no more than 33
39 and 1/3% of the Gross Settlement Amount (\$366,666.66), plus
40 reimbursement of their actual litigation expenses and costs to be paid from

the QSF. Gabrielli Defendants will not oppose this application, including any appeal or request for reconsideration if the application is denied or modified by the Court. After depositing the Gross Settlement Amount with the Settlement Claims Administrator for the QSF, Gabrielli Defendants shall have no additional liability for Class Counsel's attorneys' fees, expenses and costs.

- (B) The substance of Class Counsel's application for attorneys' fees, expenses and costs is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of any proceeding related to Class Counsel's application for attorneys' fees, expenses and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Approval.
 - (C) The attorneys' fees, expenses and costs shall be paid at the time the payments to Authorized Class Claimants are made.

16 3.3 Service Awards and Other Payments to Named Plaintiffs.

28 3.4 Net Settlement Fund and Allocation to Class Members.

Individual Class Members' Settlement Allocations are computed as follows: For every work week or part thereof that a Class Member worked during the period September 23, 2003 through February 11, 2011 he or she will be entitled to a sum of approximately \$56.00. This figure is based upon dividing the Gross Settlement Fund of \$1,100,000.00 by the approximate cumulative work weeks worked by the Class and allocating a portion of the professional fees and costs (equal to 17% of the Class Member's Settlement Allocation) to each Class Member and employer payroll taxes (4% used as an approximation). If the Individual Class Members' Settlement Allocations, in addition to (1) Court- attorneys' fees, expenses and costs for Class Counsel; (2) Court-approved Service Awards to Named Plaintiffs; (3) Employer Payroll Taxes; (4) any taxes or fees associated with establishing, investing, or liquidating the Settlement Fund; and (5) and the Settlement Claims

1 Administrator's fees and costs equals or exceeds \$1,100,000.00, each Class
2 Members' Settlement Allocations will be reduced by a pro rata amount so the
3 total paid by Gabrielli Defendants shall not exceed \$1,100,000.00.
4

5 **3.5 Tax Characterization.**

- 6 (A) Settlement payments to Class Members as identified in paragraph 3.1(A)
7 from Gabrielli Defendants' will be allocated as follows: (i) one-half (1/2)
8 of the payment will be deemed W-2 wage income, (ii) one-half will be
9 deemed non-wage liquidated damages subject to 1099 reporting. Service
10 Awards will be considered 1099 non-wage income. All wage payments to
11 Class Members shall be subject to applicable payroll and withholding
12 taxes.
- 13 (B) All applicable Employer Payroll Tax contributions associated with wage
14 payments, including, but not limited to, the employer share of FICA,
15 FUTA, and SUTA will be paid by the Settlement Claims Administrator
16 out of the QSF. Gabrielli Defendants will provide the Settlement Claims
17 Administrator such information as is necessary for the Settlement Claims
18 Administrator to make proper tax withholdings, issue and file tax-related
19 forms, and comply with all tax reporting obligations.

20

21 **4. RELEASE**

22 **4.1 Release of Claims.**

- 23 (A) By operation of the entry of the Judgment and Final Approval, and except
24 as to such rights or claims as may be created by this Agreement each
25 individual Class Member who does not timely opt-out pursuant to this
26 Agreement forever and fully releases Gabrielli Defendants from Released
27 Rule 23 Class Claims.
- 28 (B) By operation of the entry of the Judgment and Final Approval, and except
29 as to such rights or claims as may be created by this Agreement each
30 individual Authorized Class Claimant forever and fully releases Gabrielli
31 Defendants from all Released Class Claims.
- 32 (C) Except as provided in this Agreement, upon payment of the Attorneys'
33 fees, expenses, and costs approved by the Court, Class Counsel and
34 Plaintiffs, on behalf of the Class Members and each individual Class
35 Member, hereby irrevocably and unconditionally release, acquit, and
36 forever discharge any claim that he, she or they may have against Gabrielli
37 Defendants for attorneys' fees or costs associated with Class Counsel's
38 representation of the Class Members. Class Counsel further understands
39 and agrees that any fee payments approved by the Court will be the full,

1 final and complete payment of all attorneys' fees, expenses and costs
2 associated with Class Counsel's representation in the Litigation.

3 **4.2 Denial of Liability**

- 4 (A) Gabrielli Defendants have agreed to the terms of this Agreement without
5 in any way acknowledging any fault or liability, and with the
6 understanding that terms have been reached because this settlement will
7 avoid the further expense and disruption of Gabrielli Defendants' business
8 due to the pendency and expense of litigation. Nothing in this Agreement
9 shall be deemed or used as an admission of liability by Gabrielli
10 Defendants, nor as an admission that a class should be certified for any
11 purpose other than settlement purposes.
- 12 (B) Neither Party shall make any statement to the media relative to this
13 Settlement. Class Counsel has agreed to not use the Litigation or the
14 Mailing List as marketing tools or for promotional purposes in any
15 manner. Class Counsel agrees to remove all reference to the Litigation
16 from their website.

17

18 **5. INTERPRETATION AND ENFORCEMENT**

- 19 **5.1 Cooperation Between the Parties; Further Acts.** The Parties shall reasonably
20 cooperate with each other and shall use their reasonable best efforts to obtain the
21 Court's approval of this Agreement and all of its terms. Each party, upon the
22 request of any other party, agrees to perform such further acts and to execute and
23 deliver such other documents as are reasonably necessary to carry out the
24 provisions of this Agreement.
- 25 **5.2 No Assignment.** Class Counsel and Named Plaintiffs, on behalf of the individual
26 Class Members, represent and warrant that they have not assigned or transferred,
27 or purported to assign or transfer, to any person or entity, any claim or any portion
28 thereof or interest therein, including, but not limited to, any interest in the
29 Litigation, or any related action.
- 30 **5.3 Entire Agreement.** This Agreement constitutes the entire agreement between the
31 Parties with regard to the subject matter contained herein, and all prior and
32 contemporaneous negotiations and understandings between the Parties shall be
33 deemed merged into this Agreement.
- 34 **5.4 Binding Effect.** This Agreement shall be binding upon the Parties and, with
35 respect to Named Plaintiffs, the Opt-in Plaintiffs, and all Class Members, their
36 spouses, children, representatives, heirs, administrators, executors, beneficiaries,
37 conservators, attorneys and assigns.

- 1 **5.5 Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated
2 all the terms and conditions of this Agreement at arms' length. All terms and
3 conditions of this Agreement in the exact form set forth in this Agreement are
4 material to this Agreement and have been relied upon by the Parties in entering
5 into this Agreement, unless otherwise expressly stated.
- 6 **5.6 Captions.** The captions or headings of the Sections and paragraphs of this
7 Agreement have been inserted for convenience of reference only and shall have
8 no effect upon the construction or interpretation of any part of this Agreement.
- 9 **5.7 Construction.** The determination of the terms and conditions of this Agreement
10 has been by mutual agreement of the Parties. Each party participated jointly in
11 the drafting of this Agreement, and therefore the terms and conditions of this
12 Agreement are not intended to be, and shall not be, construed against any party by
13 virtue of draftsmanship.
- 14 **5.8 Blue Penciling.** If any provision of this Agreement is held by a court of
15 competent jurisdiction to be void, voidable, unlawful or unenforceable, the
16 remaining portions of this Agreement will remain in full force and effect.
- 17 **5.9 Governing Law.** This Agreement shall in all respects be interpreted, enforced
18 and governed by and under the laws of the State of New York, without regard to
19 choice of law principles, except to the extent that the law of the United States
20 governs any matter set forth herein, in which case such federal law shall govern.
- 21 **5.10 Continuing Jurisdiction.** The Parties shall request the Court to retain
22 jurisdiction over the interpretation and implementation of this Agreement as well
23 as any and all matters arising out of, or related to, the interpretation or
24 implementation of this Agreement and of the settlement contemplated thereby.
25 The Parties shall not petition the Court to modify the terms of the Agreement or to
26 increase Gabrielli Defendants' payment obligations hereunder.
- 27 **5.11 Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the
28 terms of this Agreement, whether purportedly made before or after the Court's
29 approval of this Agreement, shall be valid or binding unless in writing, signed by
30 or on behalf of all Parties and then only to the extent set forth in such written
31 waiver, modification or amendment, subject to any required Court approval. Any
32 failure by any party to insist upon the strict performance by the other party of any
33 of the provisions of this Agreement shall not be deemed a waiver of future
34 performance of the same provisions or of any of the other provisions of this
35 Agreement, and such party, notwithstanding such failure, shall have the right
36 thereafter to insist upon the specific performance of any and all of the provisions
37 of this Agreement.
- 38 **5.12 When Agreement Becomes Effective; Counterparts.** This Agreement shall
39 become effective upon its full execution and approval by the Court. The Parties

1 may execute this Agreement in counterparts, and execution in counterparts shall
2 have the same force and effect as if all Parties had signed the same instrument.

3 **5.13 Binding Authority of Class Counsel.** Class Counsel hereby represent that they
4 are fully authorized to bind the Named Plaintiffs to the terms and conditions
5 hereof and that they have retainer agreements and/or authorizations to execute this
6 Agreement on their behalf.

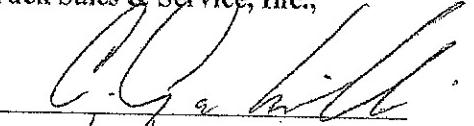
7 **5.14 Signatures.** This Agreement is valid and binding if signed by the Parties'
8 authorized representatives.

9 **5.15 Facsimile and Email Signatures.** Any party may execute this Agreement by
10 causing its counsel to sign on the designated signature block below and
11 transmitting that signature page via facsimile or email to counsel for the other
12 party. Any signature made and transmitted by facsimile or email for the purpose
13 of executing this Agreement shall be deemed an original signature for purposes of
14 this Agreement and shall be binding upon the party whose counsel transmits the
15 signature page by facsimile or email.

16 **WE AGREE TO THESE TERMS,**

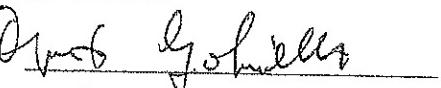
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Gabrielli Truck Sales, LTD, Gabrielli
Truck Sales of Connecticut, LLC;
Gabreilli Truck Service, Inc., Gabrielli
Ford Truck Sales & Service, Inc.,

By: 

Dated: 4/26/11

Armando Gabrielli

By: 

Dated: 4-26-11

Amedeo Gabrielli

By: 

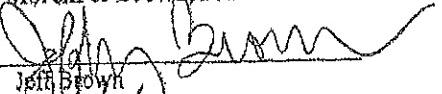
Dated:

Virginia & Ambinder, LLP

1 By: 
2 Lloyd Aminbder

3 Dated: 5/6/11

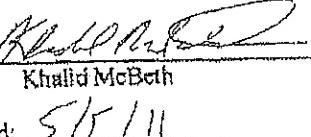
4
5 Leeds Morelli & Brown, P.C.

6
7 By: 
8 Jeff Brown

9 Dated: 5/6/11

10
11 By: 
12 Khalid McBeth

13 Dated: 5/15/11

14
15 By: 
16 Carmine Cascione

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18 4845-7674-8533, v. 24824-1043-5049, v. 1

1 By: _____
2 Lloyd Aminbder

3 Dated: _____

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5 Leeds Morelli & Brown, P.C

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7 By: _____
8 Jeff Brown

9 Dated: _____
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11 By: _____
12 Khalid McBeth

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15 By: Carmine Cascone
16 Carmine Cascone

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